

---

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

IN THE MATTER OF:	)	
	)	Docket No. <b>CWA-08-2003-0031</b>
	)	
Mr. Tim Blixseth and Blixseth Group, Inc.	)	
Mr. James Dolan and Voyager Lone Moose, LLC	)	FINDINGS OF VIOLATION
Lone Moose Meadows, LLC	)	AND
1000 Lone Moose Drive	)	ORDER FOR COMPLIANCE
Big Sky, Montana 59716	)	
	)	
<u>RESPONDENTS</u>	)	

---

**STATUTORY AUTHORITY**

The following FINDINGS are made, and ORDER issued pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by section 309 of the Clean Water Act, 33 U.S.C. §1319, (CWA or the "Act"). The Administrator has delegated these authorities to the Regional Administrator of EPA Region 8, who has in turn delegated them to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice of EPA Region 8. The ORDER is based on the findings of violation of section 301(a) of the Clean Water Act, which, among other things, prohibits the discharge of pollutants (i.e., dredged or fill material) into waters of the United States except as in compliance with a permit issued pursuant to section 404 of the CWA.

**FINDINGS OF FACT AND VIOLATIONS**

1. Mr. Timothy Blixseth, Blixseth Group, Inc., Mr. James Dolan, Voyager Lone Moose, LLC and Lone Moose Meadows, LLC ("Respondents") own property situated in Section 28, Township 6 South, Range 3 East, Gallatin County, Montana, on which is located wetlands and other waters of the U.S. (See attached map)

2. Respondents and/or those acting on behalf of Respondents, using machinery such as bulldozers, tractors, front-end loaders, etc. (Cat D6 Crawler Tractor, JD550 Crawler Tractor, Komatsu 200 Excavator, Komatsu D85E18 Dozer) discharged approximately 4,200 cubic yards of material consisting of dirt and rock in the wetlands and waters of the U.S.

3. Respondents are persons as defined in Section 502(5) of the Act, 33 U.S.C. §1362(5).

4. The machinery referenced in Paragraph 2., above, constitute point sources as defined section 502(14) of the Act, 33 U.S.C. §1362(14).

5. The discharged material referenced in Paragraph 2., above, constitutes pollutants as defined in section 502(6) of the Act, 33 U.S.C. §1362(6).

6. The placement of the material in the wetlands and waters of the U.S. constitutes a discharge of pollutants as defined in section 502(12) of the Act, 33 U.S.C. §1362(12).

7. The wetlands and other waters of the U.S. at the site are tributary to and adjacent to the Middle Fork of the West Fork of the Gallatin River, which is itself a navigable water, i.e., a water of the United States, as defined in section 502(7) of the Act, 33 U.S.C. §1362(7), and 33 C.F.R. 328.3(a).

8. The discharges of pollutants from a point source to waters of the U. S. was carried out without the required permit issued pursuant to sections 404 of the Act, 33 U.S.C. §1344, and therefore said discharges which occurred between the fall of 1997 and early 2001, constituted violations of section 301 of the Act, 33 U.S.C. §1311.

9. Each day the material remains in the waters of the U.S. without the required permit issued pursuant to section 404 of the Act, 33 U.S.C. §1344, constitutes an additional day of violation of section 301 of the Act, 33 U.S.C. §1311.

## **ORDER**

Based upon the foregoing FINDINGS, and pursuant to the authority vested in the Administrator, EPA, under CWA sections 308 and 309(a), 33 U.S.C. §§ 1318 and 1319(a), and by the Administrator delegated to the Regional Administrator, and redelegated to the undersigned, it is hereby ORDERED:

1. Respondents and their agents shall immediately terminate all discharges of dredged or fill materials to waters of the U.S. now and in the future without prior authorization by a valid permit issued by the U.S. Army Corps of Engineers pursuant to section 404 of the CWA.

2. Within 30 days of receipt of this ORDER, Respondents shall provide a complete accounting of the areas of impact or disturbance to wetlands and other waters of the U.S. on the Site. The disturbed areas shall be described in terms of cubic yards of cut and/or fill material, and acreage.

3. Within 60 days of receipt of this ORDER, Respondents shall submit a draft Restoration Plan for the disturbed wetlands and waters of the U.S. The Restoration Plan shall include a description of how the disturbed areas will be restored, which may include but is not necessarily limited to re-establishing original surface topography and revegetation. For each disturbed area, the Restoration Plan must, at a minimum, address the following:

a. A present day description of the condition of the area before the restoration work is begun. The description must include a survey done to 6-inch contour intervals, cross sectional (every 20 feet) and longitudinal profiles, and a wetland delineation. The

description must include a color map drawn at an appropriate scale, with man-made features (ski lifts, ski runs, roads, culverts, other disturbances) clearly marked and labeled. Natural features including regulated waters must also be shown on the map. Where appropriate, the map should include the entire local watershed affected by the proposed work, including all tributaries, channels, and braids (perennial, ephemeral, and intermittent).

b. The Restoration Plan shall fully describe the design of the proposed corrective action work. A map overlay, or a map drawn to the same scale as the map described in item "a." above, should be used to facilitate the description of the proposed corrective action. Where the proposed corrective work involves wetlands, the design must indicate where groundwater monitoring wells will be placed to monitor hydrology, and the locations of transects and sampling plots must be identified. A list of wetland species to be planted must be provided along with the source of the vegetation.

c. Reference areas are required to evaluate the success of corrective actions. They should be described in the same manner as is required for the area undergoing corrective action (i.e., surveys, cross sectional and longitudinal profiles, wetland delineations, hydrologic descriptions). A narrative justifying the choice of reference areas must be included.

d. The Restoration Plan must include a monitoring plan that indicates the parameters to be monitored, the frequency and approximate dates of monitoring, and the frequency and approximate dates of reporting. Photographs must be taken from established stations to provide additional documentation of progress. The monitoring plan must also describe contingency measures to be taken if the corrective action work fails to meet the desired objectives, and include a description of what will trigger the implementation of the contingency measures and when the contingency measures will be implemented.

e. Respondents must obtain any necessary state and Madison Conservation District permits and authorizations (such as "310" and "318") before starting any corrective work. The Restoration Plan shall be subject to the approval of EPA. EPA may consult with applicable agencies, e.g., the Corps of Engineers (COE), the Montana Department of Environmental Quality, the U.S. Fish and Wildlife Service (FWS), the Soil Conservation Service, the Montana State Fish Wildlife and Parks, and the Madison Conservation District. The Restoration Plan shall be prepared in accordance with the San Francisco District Habitat Mitigation and Monitoring Proposal Guidelines.

4. Respondents shall incorporate agency comments into a final Restoration Plan and submit it to EPA for review and approval within 30 days after issuance of EPA's comments. Respondents shall initiate restoration actions within 30 days of EPA approval of final plan. Respondents shall complete restoration by or before August 30, 2003.

5. This ORDER shall be effective upon receipt. Respondents shall inform EPA in writing of their intent to comply with this ORDER within 5 days of receipt. EPA requests Respondents meet with EPA if there are concerns or questions about the requirements of this ORDER. If Respondents desire an extension from any of the deadlines in this ORDER, Respondents shall submit a written request, including justification for the extension, to EPA prior to the meeting.

6. Respondents shall, in consultation with the COE, FWS, and any other pertinent agencies, take such interim protective measures as determined by EPA to be necessary to stabilize the disturbed areas pending the completion of the restoration work referenced above.

7. Respondent shall submit all notifications and correspondence to:

U.S. Environmental Protection Agency  
Attention: Kristine Knutson  
Region VIII, Montana Office  
10 West 15<sup>th</sup> Street, Suite 3200  
Helena, Montana 59626-0096

Please be advised that 33 U.S.C. § 1319(d) authorizes civil penalties of up to \$27,500 per day for each violation of Clean Water Act section 301, 33 U.S.C. §1311, and section 309(c), U.S.C. § 1319(c) authorizes fines and imprisonment for willful or negligent violations of said Act. Section 309(g), 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the Act. Issuance of this ORDER shall not be deemed to be an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Clean Water Act for violations giving rise to the ORDER. Further, the Criminal Fine Enforcement Act of 1984 provides for fines in excess of the amounts specified in the statute under certain circumstances.

Compliance with the terms and conditions of the ORDER shall not be construed to relieve the Respondents of their obligations to comply with any applicable federal, state or local law. Failure of Respondents to complete the tasks described herein in the manner and time frame specified pursuant to this ORDER may subject the Respondents to a civil action under section 309 of the Clean Water Act, 33 U.S.C. § 1319, for violation of this ORDER.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**SIGNED**

\_\_\_\_\_  
Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance and Environmental Justice

DATED this 23RD day of JANUARY, 2003.

**THIS DOCUMENT WAS FILED WITH THE REGIONAL HEARING CLERK'S  
OFFICE ON JANUARY 28, 2003.**